

City of Detroit


CITY COUNCIL

DAVID D. WHITAKER
Director
(313) 224-4946

DIVISION OF RESEARCH & ANALYSIS
Coleman A. Young Municipal Center
2 Woodward Avenue, Suite 216
Detroit, Michigan 48226
(313) 224-4946
FAX: (313) 224-0368

PEGGY ROBINSON
Deputy Director
(313) 224-4946

TO: Honorable City Council

FROM: David Whitaker, Director 
Research & Analysis Division (RAD) Staff

DATE: June 29, 2009

RE: **EMERGENCY RESOLUTION SUPPORTING
TEMPORARY AND PERMANENT INJUNCTIVE AND
DECLARATORY RELIEF AGAINST GDRRA**

Council Member Watson requested that Research & Analysis Division draft an emergency resolution supporting temporary and permanent injunctive relief against GDRRA. The requested resolution is attached.

Pursuant to Charter Sec. 4-121, City Council may obtain the opinion or advice of an outside attorney in any matter pending before it, and where there exists a conflict of interest between the City Council and another branch of City government, Council may retain an attorney to represent it in legal proceedings. Such a conflict may exist involving GDRRA at this time, given the Mayor's appointment of the GDRRA Board and the City's General Counsel.

A RESOLUTION BY COUNCIL MEMBER JOANN WATSON

**EMERGENCY RESOLUTION IN SUPPORT OF SEEKING INDEPENDENT
COUNSEL REGARDING THE GREATER DETROIT RESOURCE
RECOVERY FACILITY (RRF) TRASH INCINERATOR, AFTER JUNE 30, 2009.**

- WHEREAS** The Greater Detroit Resource Recovery Authority (GDRRA) has been responsible for disposal of Detroit's municipal solid waste, since 1991;
- WHEREAS** After June 30, 2009, GDRRA is expected to enter into new agreements for management and disposal of municipal solid waste, pursuant to competing bids by the RRF Operator or Landfill Operators;
- WHEREAS** On June 16, 2009, City Council passed a Resolution in Support of GDRRA and Other Parties Adopting the Most Efficient and Environmentally Sound Solid Waste Management System for the City of Detroit, after June 30, 2009;
- WHEREAS** At the GDRRA Board meeting on June 18, 2009, the GDRRA Board did not publicly announce the award of the contract for solid waste management after June 30, 2009. Rather, the GDRRA Board passed a "*Resolution Consenting to Acquisition by Covanta Projects, Inc. of Undivided Interest in Detroit Resource Recovery Facility on Certain Conditions*," providing that GDRRA agrees to deliver solid waste to the RRF from July 1, 2009 through June 30, 2010, and that GDRRA will agree to enter into an operating agreement with Covanta for an additional five year period;
- WHEREAS** The above-referenced agreements to continue to deliver solid waste to the RRF for an additional six (6) years were not disclosed to members of the public and the City Council in attendance at the GDRRA Board meeting;
- WHEREAS** The Detroit City Council has been unsuccessfully requesting reasonably specific and detailed information from GDRRA, the Department of Public Works (DPW), and the Administration regarding their plans for management and disposal of Detroit's solid waste after June 30, 2009, for over a year;
- WHEREAS** GDRRA has failed and refused, for an extended period of time, to provide City Council or the public with adequate, clear, and understandable information regarding the City of Detroit's solid waste management options after June 30, 2009;
- WHEREAS** The alleged obligation of the City of Detroit and GDRRA to continue to deliver solid waste to the RRF after June 30, 2009, based on language in the documents comprising the 1991 sale/leaseback transaction involving

the RRF, is arguably unenforceable, as an “illusory contract,” i.e., it seems to be based on other parties’ election, and therefore arguably lacks consideration, especially in light of the high costs to the City of Detroit and its taxpayers and residents (in excess of \$170 per ton, compared to \$25-30 per ton for alternative disposal options), during the previous operation of the RRF, arguably making it inequitable to enforce such an agreement at this time;

WHEREAS The lack of written offers by the Operator or the Owners of the RRF, at this date, to dispose of the City of Detroit’s solid waste after June 30, 2009, renders an alleged obligation based on the terms of the 1991 sale/leaseback transaction documents, arguably unenforceable;

WHEREAS The GDRRA Board’s June 18, 2009 action, approving the current Operator’s acquisition of an ownership interest in the RRF, in the midst of an ongoing bidding process involving the Operator, and without any written offer by the Operator or the Owners to dispose of the City of Detroit’s solid waste, was arguably collusive and *ultra vires*;

WHEREAS The GDRRA Board has failed and refused to provide City Council with transparent and useful information, and a clear and understandable explanation of GDRRA’s plans for managing the City of Detroit’s solid waste after June 30, 2009;

WHEREAS No attorney representing the City of Detroit’s interests in this transaction, regarding disposal of the City of Detroit’s solid waste after June 30, 2009, has provided City Council with any advice, recommendations, legal opinions or analyses of the issues involved;

WHEREAS At this time the City Council has no clear basis for evaluating comparative costs for disposal of the City of Detroit’s solid waste after June 30, 2009, whether using the RRF or by alternative means, because no authoritative bid documents providing for competitive costs of continued use of the RRF have been provided, less than two (2) weeks before commencement of performance on this major City contract;

WHEREAS It is and has been the intention and objective of the City Council to expeditiously adopt the most cost-effective and environmentally sound system for managing and disposal of municipal solid waste;

WHEREAS The lack of transparency regarding GDRRA’s plans for solid waste management after June 30, 2009, leaves the City of Detroit open to potential costs over the life of whatever agreements GDRRA may now enter into, and seek to have Council approve; **NOW THEREFORE BE IT**

RESOLVED That the Detroit City Council resolves, pursuant to City Charter Sections 4-121 and 4-122, to obtain the opinion and advice of a suitable outside attorney, with expertise in complex contractual litigation, to represent the City Council in legal proceedings seeking a temporary restraining order, preliminary and permanent injunction, and declaratory judgment, against delivery of Detroit solid waste to the Greater Detroit Resource Recovery Authority for incineration after June 30, 2009, preventing GDRRA from further wasting the City's resources and further harming the City's environment, natural resources, and public health, regarding solid waste disposal in the City of Detroit after June 30, 2009.